

### **REMARKS**

This amendment is substantially the same as the amendment filed by Applicants on June 5, 2003, which was not entered by the Examiner. An additional section has been added to address the issue raised by the Examiner in the Advisory Action mailed June 26, 2003.

Claims 1-28 were pending. New claims 29 and 30 have been added. Therefore, claims 1-30 are pending. No new matter has been added.

Claims 2, 3, and 4 have been amended in view of the Examiner's comments under 35 U.S.C. §112, second paragraph, §102(b) provided in the Office Action mailed on February 14, 2003, to clarify limitations of the claimed invention. Support for the amendments can be found at least in Figures 1, 2, and 3 of the Application as filed. In addition, claim 3 has been amended as suggested by the Examiner to clarify that the support web (17) is integral with the sidewalls and that the support web (17) spans between the sidewalls. Support for the amendments can be found at least in Figure 2. The specification has been amended to include the figure numbers Fig. 6A, Fig. 6B, and Fig. 6C. No new matter has been added.

### **Claim Objections**

The Examiner has objected to claim 3 on the basis of informalities in the claim. Applicants have amended claim 3 as described herein to address the informalities raised by the Examiner.

### **Rejections Under 35 U.S.C. §102(b)**

The Examiner has rejected claims 1, 2, 5-12, and 17-20 under 35 U.S.C. 102(b) as being anticipated by Haener U.S. Pat. No. 4,640,071 (the '071 patent).

As a basis for the rejection, the Examiner asserts that the block Haener discloses in Figs. 1 and 2 and in column 3, lines 38-64 anticipates the claimed stretcher block in claim 2 of the instant application. Applicants have amended claim 2 to more clearly describe the placement of the first transverse wall of the stretcher block as being spaced from the first end of the block. Applicants submit that the amended claim is not anticipated by Haener because Haener does not teach a block that comprises a first transverse, protruding end wall extending between the block's sidewalls that is spaced from a first end of the block; and a second transverse, protruding

end wall extending between the block's sidewalls that is spaced from a second end of the stretcher. In contrast, Haener teaches a block 20 that comprises transverse webs, one of which, as noted by the Examiner, "is located at the first end" of the block and another web is also located "so that it is spaced from a second end of the block 20" (Office Action mailed Feb. 14, 2003, at page 4). Thus, the position of the transverse webs spaced from the ends of the stretcher block, is an element of the stretcher block not taught in Haener.

*not true*

The block shown in Fig. 1 of the instant application illustrates that the transverse walls of the stretcher block are set in from (spaced from) the ends of the block, which is a feature of the claimed stretcher blocks that is advantageous to the use of the claimed block system of the invention. The open space at the ends of the stretcher blocks permits blocks with this feature to be more easily used in building than blocks previously described in the art including the blocks taught in the Haener '071 patent. This element of the claimed stretcher block is missing from the Haener block 20. The placement of the transverse web spaced from the ends of the stretcher block means that stretcher block can be placed around preset vertical stiffeners (e.g. rebar) without the need to lift the stretcher blocks over the top of the stiffener rods. In contrast, the placement of a transverse web at the end of the Haener '071 block 20 means that the Haener block 20 does not have openings at the ends, thus requires that the block 20 blocks be lifted over vertical stiffeners or rebar when used in wall construction. Applicants submit that because Haener ('071) does not teach the placement of the transverse web spaced from the end of the sidewalls of the block, the Haener '071 patent does not anticipate the claimed stretcher block and Applicants respectfully request the Examiner withdraw the rejection.

*not okay - made a 103 rejection*

The Examiner also compares the corner block of the instant application with the Haener '071 block 20'. Applicants submit that the corner block differs from the Haener block 20' and therefore is not anticipated by the Haener block 20'. As described in Haener and illustrated in Haener Figs. 3 and 4, the Haener block 20' has interlocking means only at one end of the block. In contrast, the corner block taught in the instant application in claim 3 and in Fig. 2 has interlocking means at opposing ends of the block. Thus, in contrast to the Haener block 20', the corner block has interlocking means at each end of the block. Even if, as described by the Examiner, some features present in the corner block are present in the Haener block 20', Haener does not teach each and every element of the claimed corner block. Therefore, Applicants

*is this claimed?*

respectfully submit that neither the corner block of claim 3, nor methods of using such a corner block as set forth in the instant application are anticipated by Haener. *not a 102 rejection*

*103 obvious*  
The Examiner also describes similarities between the half block of the instant application and the Haener 20a block. Applicants respectfully assert that the Haener block 20a differs from the half block of the instant application with regard to its size limitations. Claims 1 and 4 as filed and the specification at least at page 2, lines 22 and 23, indicate that the claimed half block has a length up to half the length of the stretcher and corner blocks. In contrast, this size limitation is not taught for the block 20a of Haener. In fact, Haener teaches that block "20a is substantially identical to block 20 except that it contains only two webs" (column 5, lines 63-65), therefore, the Haener block 20a does not have a length that is up to half the length of block 20. Thus, Haener does not teach each and every element of the claimed invention and therefore does not anticipate the claimed invention.

*not claimed*  
In addition, Applicants respectfully assert that the block 20a and the claimed half block differ in that block 20a, as illustrated in Figs. 9 and 10 has an interlocking means at each end of the two sidewalls but the half block as claimed in the instant application has interlocking means at only one end of the two sidewalls of the block. Haener does not teach each and every element of the claimed half block, and on this additional basis, Applicants respectfully submit that Haener does not anticipate the claimed invention.

Regarding claims 5-12, and 17-20, which all ultimately depend from claim 1, Applicants submit that the features described by the Examiner on pages 5 and 6 of the Office Action, as indicating similarity between the claimed blocks and those taught by the Haener '071 patent do not negate the differences between the instant blocks and the Haener blocks as described above herein. The Haener patent does not teach all of the limitations of the claims, and therefore, Applicants respectfully submit that Haener does not anticipate the invention claimed in claims 1, 2, 5-12, and 17-20.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1, 2, 5-12, and 17-20 under U.S.C. §102(b) as anticipated by Haener.

**Rejections Under 35 U.S.C. §103(a)**

The Examiner has rejected claims 3, 4, 13-16 and 21-28 under 35 U.S.C. 103(a) as being unpatentable over Haener U.S. Patent No. 4,640,071 (the '071 patent). The Examiner asserts that by modifying the teaching of Haener, one could obtain all the elements of Applicants' building block system that are not expressly taught by Haener. Elements found in the instant claimed invention, but not taught in Haener include, but are not limited to, size limitations on the instant half block as being up to one half the length of the stretcher block, the protrusion on the inside of the sidewalls of the half block, the presence of the interlocking means of the half block only at one end of the block, and the presence of the interlocking means of the corner block at both ends of the block.

To establish a *prima facie* showing of obviousness based on a single reference requires motivation to modify the reference make the claimed invention. The Haener reference does not meet this requirement because there is no specific motivation to modify the teaching of the reference to make the claimed invention.

Applicants respectfully assert that that one of ordinary skill would have no motivation to modify the teaching of Haener to make the claimed invention, particularly because Haener does not teach which specific ways, or in how many ways one would alter the blocks or block system. Whether or not Haener provides a general motivation to one of ordinary skill in the art to modify the blocks or building system to improve such a system, which Applicants dispute, Haener does not provide the motivation required for a finding of obviousness. The Examiner must demonstrate a specific motivation to make the stretcher, corner, and half blocks that are now claimed by Applicants. Thus, Haener must have taught that it was desirable to have the modification of the block 20a to make it less than one half the length of blocks 20 or 20', the modification of block 20' to have an interlocking means at each end, and the modification of block 20a to have a protrusion on the inside of the sidewall and an interlocking means only at one end. In re Werner Kotzab, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("[A] rejection cannot be predicated on the mere identification ... of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan,

with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.”)

With regard to the length of the half block, the specification and claims as filed clearly indicate that the length of the half block is up to one half the length of the stretcher or corner blocks. The Examiner provides no specific motivation for one of ordinary skill in the art to modify the Haener block 20a to fall within these limitations of the claimed half block.

With regard to claim 3 and the corner block 20' of Haener, Applicants respectfully submit that limitations of the corner block with respect to the interlocking means being present at both ends of the block are not found in Haener block 20'. Haener teaches a block 20' with an interlocking means at one end only. The Examiner acknowledges that Haener does not disclose the block-interlocking means being located on opposite ends of the sidewalls and a transverse upright support spanning between the sidewalls 22', 24' ” (Office Action mailed Feb. 14, 2003, at page 6). Applicants assert that there is no evidence of motivation to modify block 20' to have an interlocking means at both ends of the sidewalls.

With regard to claim 4 and the half block 20a of Haener, the Examiner acknowledges that Haener does not teach a protrusion on the inside of the sidewalls, extending from a base substantially co-planar with the sidewall's bottom surface and having a tip extending above the sidewall top surfaces configured to interlock with a block in the next succeeding course. In addition, as described above in conjunction with the 102(b) rejection, Applicants respectfully submit that limitations of the half block with respect to the interlocking means being present at only one end of the block are not found in Haener. Haener teaches a block 20a with interlocking means at both ends. Applicants respectfully submit that the Examiner has presented no evidence of motivation to modify block 20a to have an interlocking means at only one end.

The Examiner states that one of ordinary skill would be motivated to modify Haener's block 20' and block 20a to make the claimed corner block and the claimed half block to “provide an improved mortarless building block featuring improved adaptability, strength, and economy” (Office Action mailed Feb. 14, 2003 at page 6). In fact, in alleging motivation to make such a modification, the Examiner has to assert that one of ordinary skill in the art would be motivated to make contradictory block modifications, i.e., to add an interlocking means to the end of the block 20', but at the same time to remove an interlocking means from the end of the block 20a.

Applicants assert that there is no evidence of motivation for one of ordinary skill to undertake such contradictory modifications.

The Examiner has not indicated why a skilled artisan, without knowledge of the claimed blocks and building block system, would have selected any of these individual and unrelated elements from among the many disclosed in the Haener application, and why the skilled artisan would have modified each of these elements to obtain the stretcher, half, and corner blocks now claimed. Accordingly, the proper showing to support an obviousness rejection has not been provided.

In summary, Haener does not provide the specific and clear motivation required under the law to make the specific number and kind of modifications that would be required to obtain the claimed invention. Regarding claims 13-16 and 21-28, all of which ultimately depend from claim 2 or claim 3, the Examiner has not indicated any other source for motivation to modify the teachings of Haener to obtain the claimed invention. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claims 3, 4, 13-16, and 21-28 under 35 U.S.C. §103(a) as being unpatentable in view of U.S. Patent No.:4,640,071 (Haener).

#### **Advisory Action**

The Examiner indicates in the Advisory Action mailed June 26, 2003, that "The drawings clearly show that block 20a (of Haener U.S. Patent No. 4,640,071) is half the length of block 20 ". Applicants respectfully disagree. Applicants assert that the clear lack of consistency in the scale used in the drawings of the individual blocks of Haener, make it impossible to conclude size relationships between the different block types based on the drawings in the Haener patent.

The individual block drawings provided in Haener '071 are not drawn to scale relative to each other. The figures of the different types of individual blocks are drawn in a manner that that does not allow direct size comparisons between the different types of Haener blocks. The fact that the individual block drawings are not drawn to scale with respect to each other is clearly illustrated by comparing the drawings in Figs. 1, 3, 5, and 7. Figs. 1, 3, and 5 represent block 20, block 20' and block 20" respectively, and Fig. 7 is an illustration of a partial wall constructed with blocks 20, 20', and 20". Although it appears from Figs. 1, 3, and 5 that block 20 is longer

than block 20', it is clear from Fig. 7 (which provides a simultaneous, proportional view of each of the three block types) that these two types of blocks are actually the same length. Although the drawing scales appear to be inconsistent, the written descriptions of blocks 20, 20', and 20" are useful to discern their size relationships. For example, the description of the blocks in the patent at column 4, lines 59-60 indicate that blocks 20 and 20' are similar with similar components and the description of block 20" indicates at column 2, lines 64-66 that block 20" is a "short" type of block.

In an analysis of the size relationship between Haener block 20 and Haener block 20a, Applicants respectfully assert that the lack of consistency in the scale of the individual block drawings in the Figs. provided in the Haener patent '071, as described above, prevents a direct comparison of the size relationships between the various Haener blocks based on the figures. There is no single figure that includes both Haener 20 and 20a blocks and therefore a determination of the relative size of the two blocks can only be based on the written description provided in the Haener specification, and cannot be based on the figures provided.

The written description Haener indicates that blocks 20 and 20a are "substantially identical". The relationship between the characteristics of blocks 20 and 20a is clearly provided in the Haener specification at column 5, lines 63-66, which states that "block 20a is substantially identical to block 20, except it contains only two webs 26a, rather than four webs, as in block 20." Applicants assert that the Haener specification clearly indicates that notwithstanding the number of webs in the blocks, Haener block 20 and block 20a are substantially identical and thus Haener does not teach that block 20a is up to half the length of block 20.


**CONCLUSION**

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after reviewing the amendments and this response, that the application is not in condition for allowance, the Examiner is requested to call the Applicants' representative at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed check, please charge any deficiency to Deposit Account No: 23/2825.

Respectfully submitted,

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Docket No. S01436.70001.US  
Date: July \_\_, 2003  
**X07/14/03x**